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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,471	06/25/2003	Larry Gause	4002-3070/PC757.00	3218

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INDIANAPOLIS, IN 46204-2709

EXAMINER
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RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/603,471	Applicant(s) GAUSE ET AL.	
	Examiner Anu Ramana	Art Unit 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) 39-58 and 63-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 and 59-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/30/04; 6/25/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of invention I (claims 1-38 and 59-62) in the reply filed on May 1, 2006 is acknowledged. Because Applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP §818.03(a)).

### ***Claim Objections***

Claim 38 is objected to because of the following informalities. It appears that claim 38 should depend from claim 36 instead of claim 26. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18, 20-22, 28-33 and 59-61 are rejected under 35 U.S.C. 102(e) as being anticipated by LeHuec et al. (US 6,793,658).

LeHuec et al. disclose a spinal plating system including a plate 607 with an upper node or "first connection portion" 620a, a lower node or "second connection portion" 620b, an intermediate portion, a visualization opening 627 including at least one convexly curved side wall, a first member 624a along one side of the visualization opening and a second member 624b along an opposite side of the visualization opening (Figs. 2, 14a, 14b, 18, 19 and 21, col. 10, lines 52-67 and col. 12, lines 1-14).

Regarding claims 28-33, LeHuec et al. further disclose a tool or "holding instrument" 450 adapted to hold plate 607 with a clamping force (col. 10, lines 64-67 and col. 11, lines 1-29).

Claims 28, 34-36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Cesarone (US 5,851,207).

Cesarone discloses a locking plate 56 and a surgical drill guide or holding instrument having a first holding member 20 pivotally attached to a stationary second holding member 18 and a guide member 14 (Figs. 1 and 2, col. 4, lines 14-67, col. 5, lines 1-56, col. 6, lines 40-67 and col. 7, lines 1-19).

Claims 28 and 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Coates et al. (US 5,423,826).

Coates et al. disclose a plating system including a plate 20 with two bone fastener holes, a holding instrument with a guide mechanism and two guide members and a laterally extending alignment member 159 (Figs. 10, 14, 17 and 19, col. 10, lines 36-68, col. 11, lines 1-48, col. 12, lines 67-68 and col. 13).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-27 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeHuec et al. (US 6,793,658).

LeHuec et al. disclose all elements of the claimed invention except for the claimed length-to-width ratios and the plate being formed of a translucent material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a visualization opening with the claimed length-to-width ratios, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the LeHuec et al. plate of a resorbable material that is translucent, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over LeHuec et al. (US 6,793,658) in view of Boucher et al. (US 6,514,274).

LeHuec et al. disclose all elements of the claimed invention except for the plate being made of a resorbable material that is translucent.

Boucher et al. teach making a plate of a resorbable, translucent, material to enable visual alignment of the plate with holes in the underlying bone (col. 4, lines 14-30).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the plate of LeHuec et al. of a resorbable, translucent, material as taught by Boucher et al., to enable visual alignment of the plate with underlying bone holes.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-

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4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

July 9, 2006

*Anuradha Ramana*